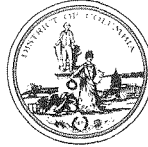


GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15324 of Roy Littlejohn Associates, Inc., pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 357 to establish an adult rehabilitation home, and a variance to allow more than twenty persons (Sub-section 357.1) for an adult rehabilitation home of sixty women and a rotating staff in the 2425 Naylor Road, S.E., (Square 5624, Lot 156).

HEARING DATE: June 27 and July 19, 1990
DECISION DATE: September 5, 1990

DISPOSITION: The Board **GRANTED** the special exception and **DENIED** the variance by a vote of 4-1 (John G. Parsons, William F. McIntosh, Charles R. Norris and Carrie L. Thornhill to grant special exception and deny variance; Paula L. Jewell opposed to the motion by proxy).

FINAL DATE OF ORDER: May 14, 1991

ORDER

The Board granted special exception relief to allow the establishment of an adult rehabilitation home and denied the requirement for a variance to allow more than twenty residents by its Order dated May 14, 1991. On May 28, 1991, the Board received a timely motion for reconsideration and for a stay of the effect of the Board's decision pending its determination on the motion for reconsideration from counsel for Neighbors United for a Safer Community (NUSC). Additional motions for reconsideration were received from Diase J. Fleming and Rufus Edward Kennedy, also parties in opposition to the application. The Board deferred consideration of the motion at its public meeting of June 5, 1991. On June 11, 1991, counsel for the applicant submitted a response in opposition to the motions for reconsideration and stay.

At a special public meeting on June 26, 1991, the Board considered the portion of the motions dealing solely with the issue of a stay of the effect of the Board's Order. In support of the motion for stay, counsel for the Neighbors United for a Safer Community argued that the granting of the requested stay would maintain the status quo until the motion for reconsideration could be properly considered by the Board; that the Neighbors United for a Safer Community is likely to succeed on the merits because of the great number of similar facilities in the neighborhood and the "great weight" that should have been afforded the Advisory Neighborhood Commission decision; the neighbors are likely to suffer irreparable harm due to the safety and criminal issues

related to the operation of the facility; the applicant would not be injured by the stay; and, it is in the public interest to stay the creation of another community residence facility until it can be determined that such a facility would be created within the appropriate regulatory framework.

In opposition to the motion for stay, counsel for the applicant argued that the Board's findings are fully supported by the record and the conclusions of low flow rationally therefrom, therefore there is no substantial likelihood that the movant will prevail on the merits; there is little or no likelihood of irreparable injury on the neighborhood due to the operation of the proposed facility; the applicant is likely to suffer injury in terms of loss of rental income occasioned by the waiting period for the Board's written order and exacerbated by a further delay as proposed by the oppositions; and, the public interest favors the applicant based on the need for the proposed type of facility to meet the programmatic needs of the Department of Corrections.

Upon consideration of the request for stay and the response thereto, the Board concludes that counsel for the Neighbors United for a Safer Community has failed to demonstrate its entitlement to a stay of the effectiveness of the Board's decision. Accordingly, it is **ORDERED** that the motion to stay is hereby **DENIED**.

The Board considered the motions for reconsideration at its public meeting of July 10, 1991. In support of the motions for reconsideration, the opposition argued as follows:

1. The Board erred in finding that there are no similar facilities in the area.
2. The Board failed to consider and address the safety issues raised by the community.
3. The Board's decision fails to reflect any review, report, or impact assessment for the Department of Public Works, Human Services, or Corrections as required by 11 DCMR 358.9.
4. The Board's decision does not reflect any reasonable conditions of approval to ensure the community an opportunity to monitor the operation and impact of the facility upon the neighborhood.
5. The decision limiting the number of residents to twenty is inconsistent with the applicant's request, the public hearing notice given to the community, and the testimony presented and, therefore, should require a new application, public notice, and public hearing.

In oppositions to the motions for reconsideration, counsel for the applicant argued that the Board's decision clearly and adequately addresses the criteria set forth in 11 DCMR 358; that referrals to appropriate agencies were made as required by 11 DCMR 358.9; that the issues and concerns raised by the Advisory Neighborhood Commission were considered and addressed by the Board; and, that the imposition of conditions is a matter of discretion and the omission of conditions does not, therefore, represent an error on the part of the Board.

Upon consideration of the motions, the response thereto, the record in the case, and its final Order, the Board concludes that it has made no error in approving the special exception, with the exception of imposing appropriate conditions to give the Board and the community an opportunity to monitor and review the impacts of the facility on the area after operations have occurred for a period of time. The remaining arguments put forth in the motions do not raise any relevant new issues which were not previously considered by the Board. The issues and concerns of all parties in opposition to the application were thoroughly presented at the public hearing and are adequately addressed in the final order of the Board.

The Board concludes that its final order addresses the issues relative to the location of similar facilities in the area and safety issues. The application was properly referred to the appropriate agencies for review and report and the Board considered the position of those agencies which responded. The Board notes that 11 DCMR 3318.6 permits the Board to proceed to decide an application based on the record before it if no report is received in the record from a referral agency before the appropriate time period has elapsed. The Board concluded in its final order that the special exception, which is limited to 20 residents, was appropriate, but that the required variance from the twenty resident maximum was not appropriate. The Board notes that the notice and hearing on the application clearly indicated both requests and was, therefore, not inappropriately advertised or considered. The Board further concludes that the issues and concerns of the ANC were afforded the "great weight" they are due and that the final order specifically addresses the issues and concerns of the ANC, as well as those of other parties to the application.

With respect to the issue raised with regard to the Board's failure to impose conditions on the proposed use, the Board concludes that the imposition of conditions on the approval of the special exception is appropriate to monitor the operation of the proposed facility in order to ensure that the establishment of the facility at this location does not result in adverse impacts on the neighborhood. Accordingly it is hereby **ORDERED** that the motions for **RECONSIDERATION** are **GRANTED**. It is further **ORDERED** that the Board original decision to grant the special exception and deny the

variance is REAFFIRMED, SUBJECT, to the following CONDITIONS:

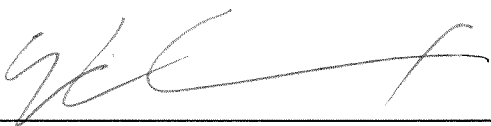
- a. Approval shall be for a period of **THREE YEARS**.
- b. The applicant shall establish and maintain a community liaison program which shall provide a forum for addressing issues and concerns of the facility and its neighbors. The program shall include the establishment of an advisory council which shall include representatives of the staff, residents, local community organization's, and the local ANC representative. The Council shall meet no less than quarterly and more often if necessary. Neighbors shall be notified no less than one week in advance of such meetings and invited to express their concerns and recommendations.

DECISION DATE: July 10, 1991

VOTE: 3-0 (John G. Parsons, Charles R. Norris and Carrie L. Thornhill to grant reconsideration and to reaffirm its decision to grant the special exception and deny the variance; Paula L. Jewell that present, not voting; Sheri M. Pruitt not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: _____

AUG 2 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF

BZA APPLICATION NO. 15324

PAGE 5

D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15324Order/SS/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15324

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 2 1991 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Iverson O. Mitchell, II, Esq.
Speights and Micheel
1835 K Street, N.W.
Suite
Washington, D.C. 20006-1203

Loretta Caldwell
WHHW, Inc.
1816 - 19th Street, N.W.
Washington, D.C. 20009

Roy Littlejohn Asso., Inc.
1101 - 14th Street, N.W.
10th Floor
Washington, D.C. 20005

Suzan J. Aramaki, Esq.
Harrison Institute for Public
Law
111 F Street, N.W., #102
Washington, D.C. 20001

Brenda Lucas Hazzard
2400 S Street, S.E., #102
Washington, D.C. 20020

Diane Fleming
2224 R Street, S.E.
Washington, D.C. 20020

Nellie R. Bason
2525 Naylor Road, S.E.
Washington, D.C. 20020

Patrick Bittinger
2521 Park Place, S.E.
Washington, D.C. 20020

Richard O. Page
2521 Park Place, S.E.
Washington, D.C. 20020

Robert Medford
1610 - 25th Street, S.E.
Washington, D.C. 20020

Beatrice Gatch
2349 R Street, S.E.
Washington, D.C. 20020

Harry Clay
1610 - 25th Street, S.E.
Washington, D.C. 20020

Herman McDaniel
1625 - 25th Street, S.E.
Washington, D.C. 20020

Shirley A. Grasty
1621 - 25th Street, S.E.
Washington, D.C. 20020

Rufus Edward Kennedy
1617 - 25th Street, S.E.
Washington, D.C. 20020

Milada Gessman
2351 R Street, S.E.
Washington, D.C. 20020

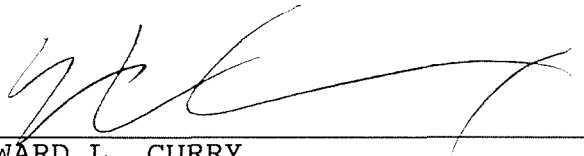
John Bruce
2334 R Street, S.E.
Washington, D.C. 20020

Rudolph Knott
2351 R Street, S.E.
Washington, D.C. 20020

BZA APPLICATION 15324
ATTESTATION SHEET PAGE 2

Jacqueline Shillings, Chairperson
Advisory Neighborhood Commission 6C
2041 Martin Luther King, Jr. Avenue, S.E.
Washington, D.C. 20020

Bill O'Field, Chairperson
Advisory Neighborhood Commission 7B
3200 S Street, S.E.
Washington, D.C. 20020



EDWARD L. CURRY
Executive Director

DATE: AUG 2 1991

15324Att/bhs